

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF ENERGY RESOURCES

Proposed Revisions of the
Renewable Portfolio Standard
(225 CMR 14.00)

July 18, 2006

**Written Comments by
Conservation Services Group Inc.**

Conservation Services Group (“CSG”) is pleased to have the opportunity to comment on the proposed changes to the Massachusetts Renewable Portfolio Standard (“MA RPS”) regulations, which include the draft *Guideline on RPS Eligibility of Biomass Generation Units*. CSG provides full service representation to renewable generators participating in RPS compliance markets and voluntary green power markets. Our clients include generators of all types, ranging in size from roof top residential photovoltaic (PV) systems to mid size utility scale merchant facilities (~10 to 20 MW). CSG’s expertise is in the following areas: regulatory process, attribute verification and tracking, transaction logistics, policy, marketing, sales, and contracting. Because our technical expertise of renewable technologies is limited to PV solar, CSG’s comments will focus on the policy and implementation aspects of the proposed regulatory changes rather than the specific performance levels being proposed. We will address three specific topics: import eligibility, advisory rulings, and behind the meter resources.

1. Import Eligibility.

CSG urges DOER not to restrict imports to facilities located in adjacent control areas. In making this request, we believe reviewing the history of how the current provisions regarding imports from adjacent control areas came to be may provide useful insights.

During the initial rule making, DOER seriously considered the issues regarding MA RPS participation by facilities located outside of New England. After considerable deliberation and evaluation of alternative strategies, DOER determined that banning imports from any particular geographic or political jurisdiction could be viewed as unduly restrictive and arbitrary. Instead, DOER chose to require that power be wheeled into New England, relying on the underlying costs structure of the wholesale electricity markets to dictate the feasibility and costs of participation. After DOER reviewed options with the Attorney General's office, the Division determined that this strategy was more likely to withstand any challenges under the reasonableness test of the Commerce Clause.

Throughout the development of the NEPOOL GIS, whenever this issue was discussed, the Participants Committee chose to restrict access to the tracking system to RPS eligible resources located in adjacent control areas. While inconsistent with states' RPS statutes and regulations, especially Massachusetts and Connecticut, the NEPOOL Participants Committee chose this approach, arguing that a "go slow" strategy would allow the parties utilizing the NEPOOL GIS to gain experience with a limited number of control area administrators. As a result, by restricting access to the tracking systems, the

NEPOOL Participants Committee stepped into the role of a policy decision-maker rather than an administrator of a policy-neutral data tracking platform.

While the “go slow” approach adopted by the NEPOOL Participants Committee has afforded market participants and state regulators an opportunity to gain much needed experience, CSG argues that with the 2005 launch of the PJM Generation Attribute Tracking System (“GATS”), as well as the implementation of the New Jersey, Pennsylvania and Maryland RPSs, now is the appropriate time for DOER to request that NEPOOL drop the adjacent requirement from its rules.

NEPOOL has shown great deference to the requests made by states to modify the NEPOOL GIS to accommodate state policy. NEPOOL is currently working to modify GIS in response to a request from Connecticut to include the tracking of Class III REC's from energy efficiency projects, and a request from Rhode Island to incorporate third party verification of behind the meter resources. Unlike either of these requests, which require NEPOOL to make significant software enhancements to the GIS, a request to drop or modify the adjacent requirement would require only a rule change that could be achieved at zero costs.

CSG recommends that DOER delete all references to adjacent control areas from the proposed rule changes. Furthermore, submit a formal request to the NEPOOL Participants Committee requesting that this requirement be deleted from the NEPOOL GIS rules.

2. Advisory Rulings

CSG appreciates that DOER wishes to streamline the application process by eliminating the advisory ruling process. However, in our experience, proposed projects

are often faced with a “chicken and egg challenge”. It is difficult to get sufficient financial support for the critical early stages of project development—such as permitting, land acquisition, and environmental impact statements—without written confirmation from the Division that a project will qualify as a new renewable resource. This is particularly true for innovative technologies such as those utilizing BioFuels and co-firing. In addition to providing applicants much needed certainty for project financing, the Advisory Ruling process provides the public critical access through the public comment provisions.

Perhaps the Advisory Rulings’ greatest strength is the provision of a clear process for the review of new technologies. Furthermore, based on a review of the biomass guidance proposed by both DOER and DEP, it seems highly unlikely that developers will be able to demonstrate to financial institutions the viability of specific projects without Advisory Rulings. For example, a bank is most likely going to decline a loan based solely on a report from the project developer stating that s/he received “positive feed back” from DOER at a meeting. Because project financing requires commitments in writing, DOER’s proposal for consultation in the place of the formal Advisory Ruling process provides no real benefit.

With the dramatic increase in investment in the renewable energy field, it is likely that there will be significant technology innovations over the next several years, benefiting both the environment and the MA RPS. This creativity will inevitably lead to questions of eligibility. As a result, project developers will be looking for confirmation of eligibility in writing from DOER.

CSG believes the public benefits from the formal Advisory Ruling process since it provides publicly available, written documentation of not only DOER's decision, but the rationale behind the decision as well. Since DOER will be considering precedent when making decisions about projects that raise challenging eligibility questions, CSG believes that all RPS participants are best served by the existing carefully-documented process. Furthermore, the requirement for the applications to go through a public comment period provides a valuable way to verify, the developers' claims.

3. Behind the Meter Resources

As mentioned in Section 1 above, in response to a specific request by the Rhode Island Department of Public Utilities, the NEPOOL GIS working group is currently working with the APX, the NEPOOL GIS administrator, on enhancements to allow for third party verification of the behind the meter resources. To meet the request from Rhode Island these changes are expected to be operational for the 2007 generation year. Once implemented, both Connecticut and Rhode Island regulations will allow behind the meter renewable generating units that utilize the services of certified third parties to verify and enter production data to qualify regardless of where they are located within New England. CSG urges DOER to take advantage of this opportunity to capitalize on these NEPOOL GIS enhancements and eliminate the Massachusetts location requirement for behind the meter renewables.

Coincidentally, the need for more robust verification and documentation of behind the meter resources has taken on considerable new importance in light of the participation of "Other Demand Resources" ("ODR") in the ISO-NE transitional capacity payments and Forward Capacity Markets ("FCM"). Since the value of a behind the meter

renewable energy generating unit in the new capacity markets will be determined by its actual generation during key indicator hours, the ISO-NE has a need for high quality data from behind the meter resources as well. CSG has committed extensive resources to both ODR participation in the capacity markets and the enhancements of the NEPOOL GIS to be sure the integration of data collection for projects that will be participating in both the capacity markets and attributes markets. This is an exciting time for distributed generation, which will bring region-wide recognition of the value of behind the meter/distributed generation resources to RPS's.

CSG believes that the RPS and FCM are two programs that will drive the requirement for robust data verification of behind the meter resources, which will now be able to participate as Qualified Capacity for the Transition Period and the FCM, as well as RPS's. However, because of the payments behind the meter resources are now eligible to receive, there is a great need and urgency by all market participants to have these resources generation data properly verified. CSG urges DOER continue the support and growth of behind the meter renewable energy projects, by allowing them to be MA RPS eligible regardless if they are located in Massachusetts, and require third party verification.

Respectfully Submitted,

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